

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: April 28, 2010
POSITION: Oppose unless amended

BILL NUMBER: SB 1113
AUTHOR: L. Wolk

BILL SUMMARY: Franchise Tax Board: Tax Administration

Current law establishes the Franchise Tax Board (FTB) as a three-member board chaired by the State Controller. The other two board members are the Chair of the Board of Equalization (BOE) and the Director of the Department of Finance. The primary function of FTB is the collection of tax on personal and corporate income.

In general, taxpayers may appeal FTB tax adjudication decisions to BOE. BOE's determination becomes final upon the expiration of 30 days from the day BOE issues its opinion on the appeal. If BOE denies the appeal, the taxpayer may bring a lawsuit against FTB for refund in superior court. FTB, however, currently lacks statutory authority to appeal to the courts if it loses at the BOE.

This bill would authorize FTB, within 90 days after a BOE final determination on a taxpayer appeal, to bring a civil action against a corporate taxpayer with a tax discrepancy of more than \$1 million, or a personal income taxpayer with a tax discrepancy of more than \$100,000. The action would be a trial de novo by the court as to law and facts. There would be a rebuttable presumption that the notice of action issued by FTB is correct, and the taxpayer would have the burden of proving that the notice of action issued by FTB is incorrect.

The suit would be filed and tried in any city in which the Attorney General maintains an office. A taxpayer would be allowed to file a motion to change the venue of such suit to a venue closer to the taxpayer's principal residence or principal place of business, which motion could not be opposed by FTB.

FISCAL SUMMARY

Finance concurs with estimates of the Judicial Council of California that the costs arising from this bill can be absorbed within the existing resources of the courts. Department of Justice (DOJ) costs to represent FTB in cases initiated by FTB are presently unquantifiable, but could be substantial. Should DOJ be unwilling or unable to represent FTB, FTB would incur costs to engage outside counsel, or would be required to redirect FTB legal staff from other revenue generating activities.

The net fiscal effect of FTB and tax payer court costs versus revenues to the state is unknown but could be a significant positive or negative amount.

COMMENTS

Finance opposes this bill unless amended to limit the use of appeals:

- While the existing system, where only tax payers can appeal tax matters to the courts is one-sided and may result in tax policies being set that have significant fiscal impacts on the state, the role of the Board of Equalization as a more streamlined way to resolve most tax disputes should be preserved. Simply allowing FTB to appeal every matter on which it loses invites excessive litigation and costs without commensurate fiscal benefit and subjects tax payers to high costs.

Analyst/Principal (0762) C. Hill	Date	Program Budget Manager Mark Hill	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS	Form DF-43 (Rev 03/95 Buff)
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- Finance suggests that a compromise could limit appeals in two ways:
 - Limit appeals to matters involving tax policies likely to affect many tax payers materially and that have revenue impacts, if applied to all tax payers similarly situated, that would exceed \$10 million.
 - Only when the appeal is approved by the Governor.

		SO	(Fiscal Impact by Fiscal Year)						
Code/Department	LA	(Dollars in Thousands)							
Agency or Revenue	CO	PROP							Fund
Type	RV	98	FC	2009-2010	FC	2010-2011	FC	2011-2012	Code
0250/Jud Branch	SO	No		-----	No/Minor Fiscal Impact	-----			0001
0250/Jud Branch	SO	No		-----	No/Minor Fiscal Impact	-----			0932
1730/FTB	SO	No		-----	See Fiscal Summary	-----			0001
0820/Justice	SO	No		-----	See Fiscal Summary	-----			0001
1100/Majr Tax Lic	RV	No		-----	No/Minor Fiscal Impact	-----			0001
<u>Fund Code</u>	<u>Title</u>								
0001	General Fund								
0932	Trial Court Trust Fund								

Suggested Amendments
SB 1113 (As amended April 28, 2010)

On page 3, delete lines 4 through 8 and insert:

“additional amounts, and fees for an individual tax payer or all tax payers similarly situated exceeds ten million dollars (\$10,000,000) for any tax year or would set or change tax policy for more than five tax payers. This subdivision shall not apply unless the Governor approves the filing of the suit.”

On page 4, delete lines 3 through 7 and insert:

“ overpayment for an individual tax payer or all tax payers similarly situated exceeds ten million dollars (\$10,000,000) for any tax year or would set or change tax policy for more than five tax payers. This subdivision shall not apply unless the Governor approves the filing of the suit.”

On page 5, delete lines 3 through 7 and insert:

“disallowance of interest for an individual tax payer or all tax payers similarly situated exceeds one million dollars (\$1,000,000) for any tax year or would set or change tax policy for more than five tax payers. This subdivision shall not apply unless the Governor approves the filing of the suit.”